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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Redacted - For Public Disclosure

ENERGY DIVISION

**Item 77 ID#3796
RESOLUTION E-3884
August 19, 2004**

R E S O L U T I O N

Resolution E-3884. San Diego Gas & Electric Company requests approval of a new renewable resource procurement contract with **[Redacted]**.

By Advice Letter 1596-E Filed on June 15, 2004.

SUMMARY

SDG&E's request for a new renewable resource procurement contract with **[Redacted] is denied.**

San Diego Gas and Electric Company (SDG&E) filed Advice Letter (AL) 1596-E on June 15, 2004, requesting Commission review and approval of a new renewable energy contract with **[Redacted]**. Energy Division recommends that SDG&E's request be denied.

SDG&E should allow the subject generator to bid in its 2004 Renewable Portfolio Standard Request for Offers.

SDG&E filed AL-1596-E under the interim authority provided in Decision (D.) 02-08-071. Now that the Commission has fully implemented the RPS program, we find no compelling reasons why the proposed contract should be authorized under the interim authority. Instead, in order to avoid potential displacement of other bidders and help ensure an open and competitive solicitation process, SDG&E should consider the subject generator's bid in its 2004 RFO. To the extent SDG&E's current RFO has closed, SDG&E should reopen it and allow the subject generator an opportunity to bid in the solicitation.

Confidential information about the contract should remain confidential if the Commission decides to allow the subject generator to bid in SDG&E's current RFO.

This resolution finds that certain material filed under seal pursuant to Public Utilities (Pub. Util.) Code Section 583 and General Order (G.O.) 66-C should be kept confidential to provide the generator the same level playing field as those bidding in SDG&E's current RFO.

BACKGROUND

The Commission provided guidance to the utilities on procuring renewable energy resources prior to full implementation of the Renewables Portfolio Standard (RPS) Program.

D. 02-08-071 authorized the utilities to enter into procurement contracts between the effective date of the decision and January 1, 2003. The Decision adopted an interim reasonableness benchmark of 5.37 cents per kilowatt-hour for procurement contracts.

On August 13, 2003, the Assigned Commissioner in Rulemaking (R.) 01-10-024 issued a ruling, "Assigned Commissioner's Ruling Specifying Criteria for Interim Renewable Energy Solicitations" (ACR), which specified criteria for any further renewable energy procurement by the utilities prior to full RPS implementation. We stated in R.04-04-026 that we anticipate a solicitation conducted under the full suite of RPS parameters to occur by July 1, 2004.

The ACR set forth general process requirements:

1. A utility must abide by the terms of the Commission's first RPS implementation decision (D.03-06-071).
2. Utilities may engage in bilateral negotiations or may issue a competitive solicitation (request for offer (RFO)) to receive bids.
3. Issuance of an interim RFO by a utility does not constitute filing of a RPS procurement plan under the terms of D.03-06-071.
4. Any renewable procurement in the interim period must not anticipate the use of any Supplemental Energy Payments (SEPs) to be awarded by the California Energy Commission (CEC) pursuant to Public Utilities Code Sec. 383.5(d).

5. The utilities are allowed to "roll over" any under-procurement in 2003 into the Annual Procurement Target (APT)¹ for 2004 without penalty. A decision not to issue an RFO prior to full RPS implementation will not waive this immunity. Conversely, any contract signed as a result of a bilateral negotiation or an RFO, and approved by the Commission, should count toward the APT.
6. Following PRG review of any proposed contracts, the utility may submit those contracts for Commission approval via Advice Letter.

SDG&E's Procurement Review Group participated in review of the contract.

In D. 02-08-071, the Commission required each utility to establish a "Procurement Review Group" (PRG) whose members, subject to an appropriate non-disclosure agreement, would have the right to consult with the utilities and review the details of:

1. Overall transitional procurement strategy;
2. Proposed procurement processes including, but not limited to, RFO; and
3. Proposed procurement contracts before any of the contracts are submitted to the Commission for expedited review.

The PRG for SDG&E consists of: California Department of Water Resources, California Energy Commission, the Commission's Energy Division, Natural Resources Defense Council, Office of Ratepayer Advocates (ORA), and The Utility Reform Network (TURN).

SDG&E discussed this contract with its PRG on June 7, 2004 and provided it with the details of the contracts and amendments. The members of SDG&E's PRG either supported or did not oppose the approval of this contract.

Although Energy Division is a member of the PRG, it reserved its conclusions for review and recommendation on the contracts to the resolution process. Energy

¹ The APT is the minimum amount of renewable generation the utility must procure each year to meet its RPS requirement, subject to the flexible compliance mechanisms authorized in D.03-06-071.

Division had to review the modifications independently, and allow for a full protest period before concluding its analysis.

The RPS Program requires each utility to increase the amount of renewable energy in its portfolio, subject to requirements specified by the Legislature and the Commission.

The RPS Program, created by SB 1078 (Statutes of 2002, Chapter 516), requires each utility to increase the amount of renewable energy in its portfolio to 20 percent by 2017, increasing by a minimum of one percent per year. The Energy Action Plan (EAP) called for acceleration of this goal to reach 20 percent by 2010. R-04-04-026 encourages the utilities to procure cost-effective renewable generation in excess of their APTs for 2004, in order to make progress towards the goal expressed in the EAP.

In order for the output of a renewable resource to count toward a utility's RPS requirements, the resource must meet the requirements of an "eligible renewable energy resource" under the definitions of the program. Wind energy facilities are eligible renewable energy resources.

R.04-04-026 established a framework for further implementation of the RPS Program, including establishing baseline quantities and 2004 procurement targets for the utilities.

As stated above, the RPS Program requires each utility to increase the amount of renewable energy in its portfolio to 20 percent by 2017, increasing by a minimum of one percent per year. The Commission establishes an APT for each utility, which consists of two separate components: the baseline, representing the amount of renewable generation a utility must retain in its portfolio to continue to satisfy its obligations under the RPS targets of previous years; and the incremental procurement target (IPT), defined as at least one percent of the previous year's total retail electrical sales, including power sold to a utility's customers from its DWR contracts. D.04-06-014 established a 2004 APT for SDG&E of 423 GWh².

Recent Commission decisions have implemented the RPS program and SDG&E has initiated its RPS solicitation for 2004.

² D.04-06-014, Appendix B (p. 5)

The Commission has implemented the RPS program via recent Commission decisions³ and the adoption of SDG&E's 2004 renewable procurement plan⁴. Furthermore, the adopt procurement plan granted SDG&E the authority to issue their 2004 RPS RFO, which SDG&E issued on July 1, 2004.

NOTICE

Notice of AL 1596-E was made by publication in the Commission's Daily Calendar. SDG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section III-G of General Order 96-A.

PROTESTS

Advice Letter AL 1596-E was not protested.

DISCUSSION

Confidential information about the contract should remain confidential if the Commission decides to allow the subject generator to bid in to SDG&E's current RFO.

Certain contract details were filed by SDG&E under confidential seal.

Energy Division recommends that certain material filed under seal pursuant to Public Utilities (Pub. Util.) Code Section 583 and General Order (G.O.) 66-C, and considered for possible disclosure, should be kept confidential to provide the subject generator with the same level playing field as the other potential bidders in SDG&E's RFO.

SDG&E claims the proposed contract pricing and terms are beneficial for ratepayers.

³ D.03-06-071, D.04-06-013, D.04-06-014, D.04-06-015, and D.04-70-029

⁴ Letter from Energy Division Director (SDGE Plan Appl1.doc), dated June 28, 2004.

Contract Price

[REDACTED]

Contract Terms

The contract outlines terms that protect the ratepayer from under-performance/default of the generator while also providing SDG&E all of the Renewable Energy Certificates (RECs) associated with purchased output. The key terms include:

- In the event that actual annual output is below guaranteed energy production, **[Redacted]** will credit SDG&E the difference between guaranteed energy production and the actual output for that year, multiplied by **[Redacted]**.
- **[Redacted]** must pay late pricing concessions if the project does not come on line by January 1, 2005.
- **[Redacted]** will be the Scheduling Coordinator and assume all imbalance penalties and GMM (Note: spell out) line losses.
- All Renewable Energy Credits (RECs) associated with output purchased by SDG&E shall be the property of SDG&E at no additional cost and in their entirety without unbundling of any component attributes.

The proposed contract is contingent upon several conditions:

- 1) Commission approval of terms, conditions, and of full recovery of costs associated with Agreement
- 2) Commission finding that output delivered under the Agreement will count towards SDG&E's APT and that the Agreement is in compliance with the California RPS program requirements under SB 1078⁵.
- 3) Commission finding that the output purchased by SDG&E under the Agreement includes all RECs associated with that output.

SDG&E claims the project will benefit a low-income community

⁵ California Energy Commission is responsible for determining the RPS-eligibility of a renewable generator

[Redacted] represents that as a result of construction and operation of this project, economic benefits will accrue to approximately 500 Tribal members of the **[Redacted]**.

The current per capita income of the local Tribes is less than \$10,000 per year. The US Department of Health and Human Services defines the poverty level for a family of four to be \$18,400. Upon commissioning of the wind facility, the project will immediately result in an approximate payment of \$1,000,000 to the **[Redacted]**.

In addition, each year the project will generate approximately \$350,000 of revenue. All proceeds from the project are allocated proportionately to the **[Redacted]** based upon the individual wind turbines installed on their respective property. Therefore, the development of the **[Redacted]** could provide substantial and immediate stimulus to this low-income area.

SDG&E should procure its renewable resources through its RFO process.

Because SDG&E has now issued an RPS RFO, thus signaling the full implementation of its RPS Program, the assessment of the proposed contract's value to SDG&E's ratepayers can be better viewed in conjunction with the competing bids in SDG&E's current solicitation process.

As of July 1, 2004, SDG&E initiated an RFO solicitation and bid evaluation process for renewable resources that has been reviewed and approved by the Commission. The goal of this process is to have an open and transparent bid solicitation process, thus ensuring that SDG&E's ratepayers receive the best combination or 'fit' of renewable resources at least-cost.

As noted earlier, the Commission previously approved renewable contracts in 2003 when renewable procurement contracts were reviewed under an interim process. That process has been effectively replaced by the issuance of RFOs, and the use of least-cost best-fit criteria by the utilities in determining which contracts to select. The Commission highly values the process it has established for the procurement of renewable energy and it is our desire to have as much renewable energy as possible procured through that process. We conclude that there are no compelling reasons that the proposed contract should be authorized under the interim authority when SDG&E's solicitation process can be made available. In fact, we are concerned that allowing the proposed contract to go forward could effectively displace other bidders who had no opportunity to compete

against the proposed contract. Therefore we reject AL 1596-E. We direct SDG&E to re-open its RFO, to the extent it is closed, to provide the subject generator **[Redacted]** an opportunity to submit a bid.

We make this decision with great deliberation as we recognize that by rejecting the contract and directing SDG&E to re-open its RFO to this particular generator, we risk losing a competitive contract (if its price and terms are indeed better for ratepayers than those bid in the RFO), since the delay could force the generator to withdraw the project and the proposed contract. We also recognize the potential benefit of the contract for a low-income community. We conclude that the benefits of **[Redacted]** participating in the RPS RFO, thus ensuring an open and transparent solicitation, outweigh the benefits of approving the contract as a bilateral agreement.

COMMENTS

"Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding."

All parties in the proceeding have stipulated to reduce the 30-day waiting period required by PU Code section 311(g)(1) to **8 days**. Accordingly, this matter was placed on the Commission's agenda **16 days** prior to the Commission meeting scheduled for August 19, 2004. By stipulation of all parties, comments shall be filed no later than **5 days** following the mailing of this draft resolution.

On August 16, 2004, SDG&E file their comments on draft resolution. In their comments SDG&E reargues their case that the contract is beneficial for the ratepayer:

1. The contract will result in significant economic benefits to SDG&E's ratepayers. For example, the purchase price is well below the benchmark established in D.02-08-071 and is competitive in today's market.
2. This contract should not displace bidders in the SDG&E's 2004 RFO.

3. Requiring the developer to submit a bid in response to SDG&E's 2004 RFO would unnecessarily delay the RFO and would likely result in project failure.

We find that SDG&E has not adequately demonstrated that approving the contract, as a bilateral will benefit SDG&E's ratepayers. We conclude that the benefits of **[Redacted]** participating in the RPS RFO, thus ensuring an open and transparent solicitation, outweigh the benefits of approving the contract as a bilateral agreement.

FINDINGS

1. D.02-08-071 directed SDG&E to file an Advice Letter to seek pre-approval of any contract for transitional procurement.
2. "Assigned Commissioner's Ruling Specifying Criteria for Interim Renewable Energy Solicitations," issued on August 13, 2003, specified criteria for any further renewable energy procurement by the utilities prior to full RPS implementation. The Ruling stated that a utility may submit renewable energy contracts for Commission approval via Advice Letter.
3. SDG&E filed Advice Letter 1596-E on June 15, 2004, requesting Commission review and approval of a new renewable energy contract with **[Redacted]**.
4. The RPS Program requires each utility, including SDG&E, to increase the amount of renewable energy in its portfolio to 20 percent by 2017, increasing by a minimum of one percent per year. The Energy Action Plan (EAP) called for acceleration of this goal to reach 20 percent by 2010.
5. Wind energy facilities are RPS-eligible renewable energy resources.
6. D.04-06-014 established a 2004 APT for SDG&E of 423 GWh⁶.
7. D.04-06-014 also directed the utilities to issue renewable RFOs, consistent with their renewable procurement plans, between June 30, 2004 and July 15, 2004.
8. SDG&E issued its RFO on July 1, 2004, and it is set to close by August 12, 2004.

⁶ D.04-06-014, Appendix B (p. 5)

9. D.04-07-029 adopted least-cost, best-fit criteria which the utilities must use in their selection process after the RFO has been closed.
10. The Commission required each utility to establish a Procurement Review Group (PRG) to review the utilities' interim procurement needs and strategy, proposed procurement process, and selected contracts.
11. SDG&E briefed its PRG regarding this contract on June 7, 2004. The members of SDG&E's PRG either supported or did not oppose the approval of this contract.
12. Certain material filed under seal pursuant to Public Utilities (Pub. Util.) Code Section 583 and General Order (G.O.) 66-C, and considered for possible disclosure, should not be disclosed. Accordingly, text in this resolution, marked "[REDACTED]" in the redacted copy, which contains the redacted information to be disclosed inside the brackets in the unredacted version, should not be made public upon Commission approval of this resolution.
13. The proposed contract price is below the benchmark price established by D.02-08-071.
14. The purchased output of the **[Redacted]** facility under the PPA would count toward SDG&E's RPS requirements.
15. SDG&E claims the project will benefit a low-income community.
16. The assessment of the proposed contract's value to SDG&E's ratepayers can be better viewed in conjunction with the competing bids in SDG&E's current solicitation process.
17. The Commission previously approved renewable contracts in 2003 when renewable procurement contracts were reviewed under an interim process. That process has been effectively replaced by the issuance of RFOs, and the use of least-cost best-fit criteria by the utilities in determining which contracts to select.
18. There are no compelling reasons why the proposed contract should be authorized under the interim authority when SDG&E's solicitation process can be made available.
19. Allowing the proposed contract to go forward could effectively displace other comparable bidders who would have no opportunity to compete against the proposed contract.
20. AL 1596-E should be denied.

21. SDG&E should re-open its RFO, to the extent it is closed, to **[Redacted]** so that it may have an opportunity to submit a bid.

THEREFORE IT IS ORDERED THAT:

1. Advice Letter AL 1596-E is denied.
2. SDG&E is directed to re-open its RFO to **[Redacted]** so that it may have an opportunity to submit a bid.
3. This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on August 19, 2004; the following Commissioners voting favorably thereon:

STEVE LARSON
Executive Director